

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-) Case No. CR-09-81-F
)
MARCUS DEWAYNE OAKES,)
)
Defendant.)

ORDER

On July 8, 2016, defendant, Marcus Dewayne Oakes, filed an application seeking leave from the Tenth Circuit to file a second or successive motion pursuant to 28 U.S.C. § 2255, challenging his conviction under 18 U.S.C. § 924(c). Defendant's application was based on Johnson v. United States, 135 S.Ct. 2551 (2015), in which the Supreme Court held the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e), is unconstitutionally vague.

That same day, the Tenth Circuit abated defendant's application pending resolution of the issue of whether the similarly worded residual clause of § 924(c) is unconstitutionally vague. Almost three years later, on June 24, 2019, the Supreme Court issued its opinion in United States v. Davis, 139 S.Ct. 2319 (2019), invalidating the residual clause of § 924(c) as unconstitutionally vague.

On January 3, 2020, the Tenth Circuit granted defendant authorization to file a second or successive § 2255 motion in this court challenging his § 924(c) conviction and sentence under Davis. In its order, the Tenth Circuit did not transfer any proposed § 2255 motion to this court. Prior to issuing its order, the Tenth

Circuit had directed defendant to supplement his application for authorization and any proposed § 2255 motion addressing, in part, the implication of Davis. The Tenth Circuit record reflects that the order was returned undelivered. Therefore, defendant did not file any supplement.

Because the Tenth Circuit did not transfer any proposed § 2255 motion, this court does not have a § 2255 motion to adjudicate. Therefore, if defendant desires to file a second or successive § 2255 motion challenging his § 924(e) conviction and sentence under Davis, he shall do so not later than March 6, 2020.

Accordingly, defendant, Marcus Dewayne Oakes, is **DIRECTED** to file, **on or before March 6, 2020**, any second or successive motion under 28 U.S.C. § 2255 challenging his 18 U.S.C. § 924(c) conviction under United States v. Davis, 139 S.Ct. 2319 (2019) which he may choose to file. Upon receipt of any such motion, the court shall enter an order setting a deadline for plaintiff, United States of America, to respond to the motion and a deadline for defendant to file any reply to the response.

IT IS SO ORDERED this 6th day of January, 2020.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE